



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Lisa J. Stevenson  
Acting General Counsel

**BY:** Kathleen M. Guith *KMG*  
Associate General Counsel for Enforcement

Peter Blumberg *PGB*  
Acting Deputy Associate General Counsel

Peter Reynolds *PTR*  
Attorney

**RE:** MUR 7053 (Flemming for Congress, *et al.*)  
Recommendation to Close the File

This matter originated with a referral from the Reports Analysis Division ("RAD") of Flemming for Congress and Martha Flemming in her official capacity as treasurer (the "Committee").<sup>1</sup> RAD referred the Committee for accepting \$198,200 in excessive contributions in the form of loans from "Spanky, LLC," a limited liability company that is taxed as a partnership. On April 26, 2016, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 110.9 by knowingly accepting excessive contributions, and reason to believe Spanky, LLC, violated 52 U.S.C. § 30116(a) and 11 C.F.R. § 110.1(b) by making excessive contributions in connection with the loans.<sup>2</sup>

The Office of General Counsel ("OGC") conducted an investigation that confirmed Spanky, LLC is taxed as a partnership and discovered that Spanky, LLC has a single member. Based on this information, OGC advised the Commission that the excessive contributions should

<sup>1</sup> Reports Analysis Division, Referral of Flemming for Congress, 14L-02 (Feb. 24, 2014) ("RAD Referral").

<sup>2</sup> See Certification, MUR 7053 (Flemming for Congress) (Apr. 26, 2016). The Commission's determination was based on the conclusion that the loans were contributions because it did not appear that any exceptions to the definition of contribution apply. See Spanky, LLC Factual & Legal Analysis at 4, MUR 7053 (Flemming for Congress) (May 11, 2016); Committee Factual & Legal Analysis at 4, MUR 7053 (Flemming for Congress) (May 11, 2016).

1 be attributed to the sole member of Spanky, LLC, Sherry Hackett, pursuant to Commission  
2 regulations.<sup>3</sup> OGC thus recommended that the Commission find reason to believe that Hackett  
3 violated 52 U.S.C. § 30116(a), and enter into pre-probable cause conciliation with Hackett for  
4 making the excessive contributions, and with the Committee for receiving the excessive  
5 contributions.<sup>4</sup>

6  
7 OGC's recommendations were discussed at the Executive Sessions of February 7, 9 and  
8 22; discussion focused on whether the loans were exempted from the definition of contribution  
9 pursuant to the Commission's regulation regarding lines of credits at 11 C.F.R. § 100.83.  
10 Ultimately, the Commission failed to approve OGC's recommendations by the required four  
11 affirmative votes because there were no longer at least four Commissioners willing to proceed on  
12 the theory that the loans were excessive contributions under the Act.<sup>5</sup> In light of the failed vote  
13 on the recommendation to proceed and the impending statute of limitations, we recommend that  
14 the Commission close the file in MUR 7053 and approve the appropriate letters.<sup>6</sup>

15  
16 **RECOMMENDATIONS:**

- 17  
18 1. Close the file.  
19 2. Approve the appropriate letters.  
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<sup>3</sup> Second General Counsel's Report at 5, MUR 7053 (Flemming for Congress) (Jan. 19, 2017).

<sup>4</sup> *Id.* at 7.

<sup>5</sup> See Certification, MUR 7053 (Flemming for Congress) (Feb. 27, 2017).

<sup>6</sup> There were two loans from Spanky, LLC to the Committee. The statute of limitations ran on March 6, 2017, for the first loan, and will run on June 28, 2017, for the second loan.